

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

**THE DUFRESNE SPENCER GROUP, LLC,
d/b/a Ashley Furniture Homestore**

PLAINTIFF

v.

CASE NO. 3:19-CV-00085 BSM

STONE PARTNERS LLC

DEFENDANT

ORDER

Stone Partners LLC's motion to dismiss [Doc. No. 5] is denied, but the Dufresne Spencer Group, LLC ("DSG") is directed to amend its complaint within fourteen days of the date of this order to properly plead subject matter jurisdiction.

Stone Partners facially and factually challenges the existence of subject matter jurisdiction. *See Branson Label, Inc. v. City of Branson, Mo.*, 793 F.3d 910, 914 (8th Cir. 2015) (distinguishing between "facial" and "factual" attacks to subject matter jurisdiction). As a limited liability company, DSG takes the citizenship of each of its members, *see OnePoint Solutions, LLC v. Borchert*, 486 F.3d 342, 346 (8th Cir. 2007), but the complaint mistakenly refers to its state of incorporation and principal place of business. *See* Compl. ¶ 1, Doc. No. 1.

DSG's response and exhibits, however, demonstrate that none of its members are citizens of Arkansas. Accordingly, it appears that the parties are diverse, and subject matter jurisdiction is proper. Out of an abundance of caution, DSG is directed to file an amended complaint within fourteen days of the date of this order to cure the defective jurisdictional allegations. *See Nat'l Farmers Union Prop. & Cas. Co. v. Fisher*, 284 F.2d 421, 423 (8th

Cir. 1960) (“We shall appreciate it if the trial judges will carefully scrutinize, and have corrected if necessary, those allegations of the pleadings which are essential to establish federal diversity jurisdiction in cases such as this.”).

IT IS SO ORDERED this 20th day of May 2019.


UNITED STATES DISTRICT JUDGE